

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT TUCKER,

Petitioner,

-against-

DALE ARTUS, Superintendent,

Respondent.

07 Civ. 10944 (RJH) (DF)

**ORDER ADOPTING
REPORT AND
RECOMMENDATION**

On November 9, 2007, Robert Tucker timely petitioned this court for a writ of habeas corpus, challenging his 1998 conviction in New York State Supreme Court.

On December 12, 2011, Magistrate Judge Debra Freeman issued a Report and Recommendation (the "Report") advising this court to deny the writ and dismiss the petition with prejudice. The Report gave Tucker fourteen days to file written objections to the Report and Recommendation, and warned him that failure to file timely objections would waive those objections both in the District Court and on later appeal to the United States Court of Appeals. (Report at 28-29.) A copy of the Report was mailed to Tucker at the address he provided to the court on October 13, 2011: Din#99-A-1068, Auburn Correctional Facility, Box 618, Auburn, NY, 13024. That letter was not returned to the court, and an inmate lookup confirms that Tucker remains incarcerated at the Auburn Correctional Facility under the above Department Identification Number. Nevertheless, no objections were filed by Tucker.

A district court judge may designate a magistrate judge to hear and determine certain motions and to submit to the court proposed findings of fact and a


recommendation as to the disposition of the motion. *See* 28 U.S.C. § 636(b)(1). Any party may file written objections to the magistrate's Report and Recommendation. *Id.* In reviewing a Report and Recommendation, the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where no objection to a Report and Recommendation has been filed, the district court “need only satisfy itself that there is no clear error on the face of the record.” *Urena v. New York*, 160 F.Supp.2d 606, 609–10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985)).

As Tucker did not object to Judge Freeman’s Report within the authorized period, the court reviews it for clear error only. Upon review, the court finds no clear error, and hereby affirms and adopts the Report in its entirety as the opinion of the court. Tucker’s petition is DENIED with prejudice. Further, as Tucker has not made a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability. *See* 28 U.S.C. 2253(c)(1). Tucker may, however, pursue any further appellate remedies *in forma pauperis*.

The Clerk of the Court is directed to mail a copy of this order to petitioner, and to close this case.

SO ORDERED.

Dated: New York, New York
Jan. 27, 2012



Richard J. Holwell
United States District Judge